

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA 4:20-CR-00026-17

VS. HOUSTON, TEXAS

GUSTAVO GARZA-AVALOS SEPTEMBER 10, 2024

TRANSCRIPT OF REVOCATION AND SENTENCING HEARING PROCEEDINGS
HEARD BEFORE THE HONORABLE LEE H. ROSENTHAL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

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FOR THE DEFENDANT:

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Official Court Reporter:

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United States District Court
Southern District of Texas
515 Rusk
Room 8004
Houston, Texas 77002

Proceedings recorded by mechanical stenography,
transcript produced via computer.

PROCEEDINGS

2 THE COURT: All right. We're here on a sentencing for
3 both the criminal case and the revocation.

4 MS. RODRIGUEZ: The attorney for the revocation is not
5 here yet, Judge.

6 THE COURT: All right. Do you want to wait for him?
7 I'm happy to do so.

8 MS. RODRIGUEZ: No, we don't need to. It's two
9 separate --

0 THE COURT: All right. Go ahead and state your
1 appearances then, please.

12 MS. STABE: Jennifer Stabe for the government.

13 MS. RODRIGUEZ: Lourdes Rodriguez for Mr. Garza-Avalos.

14 THE COURT: Very good. And is the interpreter here?

11:05AM 15 There you are.

18 Ms. Rodriguez, have you and your client
19 together gone over all of the presentence materials?

11:06AM 20 MS. RODRIGUEZ: I went to see him, Judge. I brought
21 him information, case law about the questions that he has. He
22 claims I didn't spend enough time with him.

23 I went to see him, I guess, last week and then
24 Saturday and brought him a copy of the amendments for 2024.

11:06AM 25 They don't address either the importation or exportation and

1 they don't address the other questions that he had with the
2 criminal history.

3 So I gave him the case law and the new amendments
4 and I find that in this case for the ten years to count, they
11:06AM 5 count backwards from the date the offense was committed and in
6 his case it was December, not the date of the arrest and
7 therefore, the probation was correct.

8 THE COURT: All right. You did also object to the way
9 in which methamphetamine amounts are calculated.

11:07AM 10 MS. RODRIGUEZ: Yes.

11 THE COURT: Your objection is noted. It is overruled
12 because the Sentencing Commission has provided the method that
13 is used and that is the method that I will use.

14 Obviously considering the 3553(a) factors allows
15 me to consider the appropriate sentence, even taking into
16 account the amount of methamphetamine that is calculated as
17 part of the defendant's relevant conduct.

18 So I know that you had asked, Ms. Rodriguez, for
19 an offense level of 29 --

11:08AM 20 MS. RODRIGUEZ: Yes.

21 THE COURT: -- which would result -- if the criminal
22 history was reduced on a variance to a five rather than a
23 six --

24 MS. RODRIGUEZ: Correct.

11:08AM 25 THE COURT: -- that would result in a 210- to

1 262-month -- no, wait. Let me make sure I'm right on this.

2 If the offense level is a 29 and we are looking
3 at a criminal history of five, then we are looking at a 140- to
4 175-month range.

11:08AM 5 If we take the government's position and leave
6 both the criminal history category and the offense level as is,
7 then we're looking at 235 to 293 months.

8 I believe we may have covered this at the prior
9 hearings, but I'm not going to impose a fine. There's no
11:09AM 10 ability to pay.

11 Does the government ask me to remit the special
12 assessment?

13 MS. STABE: We can, Your Honor. We can remit the
14 special assessment.

11:09AM 15 THE COURT: All right. So ordered.

16 Thank you.

17 All right. At this time I'd like to hear from
18 Mr. Garza-Avalos and from counsel.

19 I would note that the revocation that is also
11:09AM 20 before me, the range here is 46 to 57 months.

21 THE INTERPRETER: I'm sorry, Your Honor?

22 THE COURT: 46 to 57 months.

23 MS. RODRIGUEZ: I will let the client talk first.

24 THE COURT: Go ahead, please, sir.

11:10AM 25 THE DEFENDANT: What I would like to say, Your Honor,

1 there are certain things that I do not agree with that are
2 happening in my case.

3 In the first place, my attorney has not come to
4 see me continually so that we can speak about the case. Of the
11:10AM 5 time that I'm given, 30 days, she has only come once to see me.

6 And when I want to say something to her so that
7 we can discuss this in front of me, she doesn't do it.

8 There are certain things here that I do not agree
9 with. I can show you, please. For eight months, she didn't
11:11AM 10 come to see me. She only came to see me last month. In those
11 eight months, I could have covered all this.

12 And she has not reviewed my documents. I am
13 forcing her to do this.

14 THE COURT: All right. Mr. Garza-Avalos --

11:11AM 15 THE DEFENDANT: Yes.

16 THE COURT: -- what is it that you want me to consider
17 in imposing sentence?

18 THE DEFENDANT: This here.

19 May I pass this on to you, Your Honor?

11:11AM 20 THE COURT: Yes. (Reviewing.)

21 I do know your request for a continuance was
22 granted, so we've taken care of that.

23 In addition, based on your attorney's capable
24 arguments, I am, as a variance, reducing the criminal history
11:12AM 25 category from a six to a five. That is obviously beneficial to

1 you because it reduces the sentencing exposure that you face.

2 Your attorney has also asked me to consider
3 whether the guideline range that applies in your case should be
4 reduced even below 210 months, which is the low end of the
5 guidelines as it would currently be calculated. Your attorney
6 would like me to go down far enough to result in a 140-month
7 sentence at the low end.

8 So your attorney is doing a great deal to ask me
9 to consider ways in which your sentence could be reduced below
10 235 months, which is what the guideline range would call for.

11 So I have considered what your communications to
12 your lawyer raise and I think that all of these points have
13 been fully taken care of.

14 So to the extent you're asking me for yet another
15 continuance, that's denied.

16 What else would you like to say, sir?

17 THE DEFENDANT: I have nothing else to say.

18 I would like to ask, Your Honor, have you
19 received the letter that my daughter sent you?

20 MS. RODRIGUEZ: I think there was a docket entry,
21 Your Honor.

22 THE COURT: What's the number?

23 MS. RODRIGUEZ: I don't know if I saw that. I know
24 because I asked him -- it was not through me so I couldn't
25 bring it to the Court.

1 THE COURT: Was it docketed?

2 MS. RODRIGUEZ: Pardon me?

3 THE COURT: Was it docketed?

4 MS. RODRIGUEZ: I don't know.

11:15AM 5 THE COURT: All right. Ms. Eddins will make sure that
6 I have it before me.

7 MS. RODRIGUEZ: Okay.

8 THE COURT: Thank you. Is there anything else that you
9 wanted to say, sir?

11:16AM 10 THE DEFENDANT: I find nothing else to say.

11 THE COURT: All right. Ms. Rodriguez, what would you
12 like to say?

13 MS. RODRIGUEZ: Your Honor, I think we argued the last
14 time when I requested 120 months based on the disparity of the
11:16AM 15 sentencing amount in the circuits. I believe that my client,
16 regardless of his insistence, has received the best possible in
17 everything that we had done there.

18 Still, I think that a departure is proper in this
19 case. I think the characteristics call for something less than
11:16AM 20 what's required by the guidelines.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

23 Government?

24 MS. STABE: Thank you, Your Honor.

11:16AM 25 You know, I understand that Mr. Garza-Avalos has

1 not been happy with the way that the PSR has turned out and I
2 just want to make a couple of things clear for the record, that
3 in this case I know that he was asking about the amendments,
4 but the zero-point offender does not apply to him in this case
5 because of his criminal history.

6 And, you know, the Court obviously, as you
7 already ruled, is already taking into consideration the
8 criminal history and reducing that from a six to a five, which
9 lowers his possible range of punishment.

10 I know he also has some arguments about the plea
11 agreement. And just kind of for the record, you know, it was
12 myself, his previous defense attorney, case manager
13 Shannon Jones and Judge Sheldon were all present when he signed
14 the plea agreement.

15 And if there's any need for it, Mr. Mills, his
16 previous defense attorney, is present outside the courtroom.
17 But I think that the record speaks for itself that the plea
18 agreement was signed freely and voluntarily in this case.

19 With regards to the revocation, I think that the
20 evidence is clear because the allegation is that he committed a
21 new law violation and the fact that we're here today for his
22 sentencing and that he pled guilty proves that up as well. In
23 that case, we would just be asking for the low end of the
24 guideline range of 46 months for that revocation.

25 As far as his sentence in this case, our position

1 is that a guideline sentence of 210 months is appropriate.
2 This defendant went to a location, he bought a kilogram of
3 methamphetamine. He intended to use that.

4 The purity is in place for a reason. Buying
11:18AM 5 1 kilogram of almost 100 percent pure methamphetamine is not
6 the same as getting a mixture and substance of meth. It's much
7 more dangerous, it's more deadly. It can be distributed into
8 many more individual dosage units than a mixture and a
9 substance and so our position is that is why these guideline
11:19AM 10 ranges are what they are and are different from a mixture and
11 substance.

12 And additionally, the reason the sentence, this
13 guideline range is 210 to 262 months is because of the
14 defendant's conduct. He has chosen to continue to commit
11:19AM 15 offenses over and over and over again and that is why his
16 criminal history category is so high.

17 He has been to federal prison before for a
18 sentence of 40 months. He's had run-ins related to narcotics
19 previously and he has multiple, multiple illegal reentries.

20 And so based on all of the factors in this case,
21 we feel that the low end of the guidelines of 210 months is
22 appropriate, Your Honor.

23 THE COURT: Do you want the 46 months to run
24 concurrently or consecutively or a combination?

11:19AM 25 MS. STABE: Your Honor, we would be completely fine if

1 they ran concurrently.

2 MS. RODRIGUEZ: I'm sorry, Judge. Are you referring to
3 the supervised release? Are you referring to the supervised
4 release case?

11:20AM 5 THE COURT: No -- yes, I was referring to the
6 revocation.

7 MS. RODRIGUEZ: Because I believe it cannot run
8 concurrent, but it can be divided.

9 THE COURT: All right. Anything further?

11:20AM 10 MS. RODRIGUEZ: No.

11 THE COURT: I have read the letter from your daughter.
12 It is obviously made part of this record. It's filed at Docket
13 Number 881.

14 And just so our record is clear, I don't see any
15 need or legal requirement for an evidentiary hearing on the
16 presentence report and we have already resolved the counsel
17 issue.

18 May I see probation for a moment, please.

19 (Off-the record discussion.)

11:22AM 20 THE COURT: The Court has had an opportunity to look at
21 this case several times and to consider all of the arguments
22 raised in light of the defendant's current conviction and his
23 criminal history.

24 As noted, that criminal history is of concern.
11:22AM 25 The defendant has a strong association with trafficking not

1 only drugs but also weapons. He is being held accountable for
2 close to a thousand grams of pure methamphetamine and that is
3 appropriate given all of the circumstances disclosed by this
4 record.

11:22AM 5 The government has asked me for essentially a
6 210-month sentence and the defense has asked me to go
7 significantly below that.

8 Here is the sentence that I think is as close as
9 I can come to addressing the sentencing guideline objectives
11:23AM 10 and the 3553(a) factors.

11 I think the defendant wants to say something
12 more.

13 Go ahead, sir.

14 THE DEFENDANT: I want to say that I have nothing,
11:23AM 15 nothing to do with a firearms charge.

16 THE COURT: Your offense of conviction is part of this
17 record.

18 All right. The Court believes that an appropriate
19 sentence in this case on the conviction that stands before me
11:24AM 20 is 160 months; 46 months on the revocation. And of those
21 46 months, 23 months are to run concurrently with the
22 160 months and 23 months to run consecutively for a total time
23 in prison of 183 months.

24 When you are released from prison, you will be
11:24AM 25 placed on supervised release subject to any detainer for your

1 removal from this country.

2 Within 72 hours of your release from the custody
3 of the Bureau of Prisons, you must report in person to the
4 probation office in the district to which you are released.

11:25AM 5 While you are on supervised release, you must not
6 commit any federal, state or local crime and you must comply
7 with all the standard conditions adopted by this Court under
8 General Order Number 2017-01, abide by any mandatory conditions
9 required by law, and comply with the following additional
11:25AM 10 conditions:

11 You must immediately report, continue to report
12 or surrender to U.S. Immigration and Customs Enforcement and
13 follow all of their instructions and reporting requirements
14 until any deportation proceedings are completed.

11:25AM 15 If you are ordered deported from the
16 United States, you must remain outside the United States unless
17 legally authorized to reenter. If you do reenter, you must
18 report to the nearest probation office within 72 hours after
19 you return.

11:25AM 20 You must seek proper documentation from the U.S.
21 Immigration and Customs Enforcement authorizing you to work in
22 the United States.

23 You must participate in an outpatient substance
24 abuse treatment program and follow all the rules and
11:26AM 25 regulations of that program. The probation officer will

1 supervise your participation in the program, including the
2 provider, the place, the type, how long it lasts and how
3 intense it is. You must pay the costs of the program if
4 financially able to do so.

11:26AM 5 You must submit to substance abuse testing to
6 determine if you've used a prohibited substance. You must pay
7 the costs of the testing if financially able. You may not
8 attempt to possess or to obstruct or tamper with the testing
9 methods.

11:26AM 10 You must not possess any controlled substances
11 without a valid prescription and if you do have a valid
12 prescription, you must follow the instructions on the
13 prescription.

14 We've already dealt with the fine and with the
15 special assessment.

16 Are there any requests that the defense has on a
17 designation of a facility?

18 Ms. Rodriguez?

19 MS. RODRIGUEZ: Yes.

11:27AM 20 THE COURT: Any requests for a recommendation on what
21 facility?

22 MS. RODRIGUEZ: I believe, Your Honor, his daughter is
23 here in Houston, so anything close to Houston.

24 THE COURT: Okay. I'll recommend --

11:27AM 25 MS. RODRIGUEZ: He needs to be admonished of the right

1 to appeal.

2 THE COURT: I'll make a recommendation for designation
3 to a facility close to Houston.

4 MS. RODRIGUEZ: Okay.

11:27AM 5 PROBATION OFFICER: Yes, Your Honor. And I apologize,
6 but I missed the term of supervised release, the number of
7 years that the Court placed him on.

8 THE COURT: Five years.

9 THE PROBATION OFFICER: Your Honor, if I may,
10 Jarrod Shaw for the revocation matter in Case 2:15-cr-17.

11 To clarify for the record, the Court found that
12 he violated both 1 and 2?

13 THE COURT: Yes. And supervised release is revoked if
14 that's what you were looking for.

11:28AM 15 PROBATION OFFICER: And there will be no further
16 supervised release?

17 THE COURT: None.

18 PROBATION OFFICER: Thank you, Your Honor.

19 THE COURT: Thank you.

20 Anything further?

21 (No response.)

22 THE COURT: You do have a right to appeal, sir. If you
23 want to file an appeal, you must file your notice of intent to
24 do so within 14 days from the date the judgment is entered. If
11:28AM 25 you want a lawyer to represent you on an appeal and cannot

1 afford one, you may ask the Court to appoint one.

2 Do you understand those rights?

3 THE DEFENDANT: Yes.

4 THE COURT: Thank you very much.

11:28AM 5 MS. RODRIGUEZ: Thank you, Your Honor. May I be
6 excused?

7 THE COURT: You may. Thank you.

8 MS. STABE: Thank you, Your Honor.

9 THE MARSHAL: All rise.

10 (The proceedings were adjourned.)

11 * * * *

12 REPORTER'S CERTIFICATE

13 I, Lanie M. Smith, CSR, RMR, CRR, Official
14 Court Reporter, United States District Court, Southern District
15 of Texas, do hereby certify that the foregoing is a true and
correct transcript, to the best of my ability and
understanding, from the record of the proceedings in the
above-entitled and numbered matter.

16
17 /s/ Lanie M. Smith
18 Official Court Reporter
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